

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANDRA A. JOHNSON
Claimant

VS.

HUTCHINSON HOSPITAL CORP.
Respondent
Self-Insured

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Docket No. 264,210

ORDER

Claimant appealed from the July 12, 2002 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

Appearances

Claimant alleges she aggravated her preexisting bilateral carpal tunnel syndrome condition while working for respondent. Respondent denies that claimant's employment at the Hutchinson Hospital caused additional injury and argues that any worsening of claimant's condition during her employment with respondent was a natural consequence of her pre-existing condition. Respondent further contends that claimant suffered a subsequent aggravation of her preexisting condition from the activities claimant performed after she terminated her employment with respondent. Judge Moore denied claimant's request for preliminary hearing benefits finding claimant's current condition and need for medical treatment was not a direct consequence of the alleged work-related injury. Therefore, the issue is whether claimant's current temporary total disability and need for medical treatment are due to an accidental injury that arose out of and in the course of claimant's employment with respondent. This issue is considered jurisdictional and is subject to review by the Appeals Board (Board) on an appeal from a preliminary hearing order.¹

¹ K.S.A. 44-534a(a)(2) and K.S.A. 44-551(b)(1).

Findings of Fact and Conclusions of Law

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.² “Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”³ The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.⁴

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁵ An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.⁶ The test is not whether the accident causes the condition, but whether the accident aggravates, accelerates or intensifies the condition.⁷ It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.⁸

The Board set out the facts of this case in some detail in its prior Order.⁹ It is not necessary to repeat them here. Little has been added to the record since that Order was entered. Acknowledging this case is a close call, the Board again finds claimant has failed to prove that her current condition and need for medical treatment is directly traceable to

² K.S.A. 44-501(a); *see also Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993) and *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

³ K.S.A. 44-508(g). *See also in re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 44-501(g).

⁵ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

⁶ *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

⁷ *Boutwell v. Domino’s Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469, *rev. denied* 265 Kan. 884 (1998); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁸ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997); *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P.2d 697 (1973). *See Also Bradford v. Boeing Military Airplanes*, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1084 (1996).

⁹ *Johnson v. Hutchinson Hospital Corp.*, No. 264,210 (Kan. WCAB Aug. 27, 2001).

her employment with respondent. Rather, the evidence indicates a subsequent aggravation and worsening of her condition. Therefore, the Board finds claimant has suffered an intervening accident. Although there is evidence to the contrary, based upon the record compiled to date, the Board finds the credible evidence supports the Administrative Law Judge's decision to deny preliminary benefits. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.¹⁰

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore dated July 12, 2002, should be, and the same is hereby, affirmed.

Dated this _____ day of November 2002.

IT IS SO ORDERED.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Kendall R. Cunningham, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation

¹⁰ K.S.A. 44-534a(a)(2).